

# Montana Planning News

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# MONTANA PLANNING NEWS

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Community Affairs  
Planning Division

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## DCA RELEASES REVISED SUBDIVISION RULES

Local officials now have the authority to more closely regulate the use of subdivision review exemptions under new rules adopted by the Department of Community Affairs in November. Those rules direct local governing bodies to adopt criteria for determining when exemptions are proposed to evade subdivision review. By defining when evasion of the act is intended, local officials can monitor use of the exemptions and prohibit their abuse.

The rules were adopted by the Department as "Revised Uniform Standards for Monumentation, Certificates of Survey and Final Subdivision Plats" after months of public review and discussion.

The revisions clarify and modify several rules, but the most important changes concern regulations on the exemptions for an occasional sale and conveyance to a member of the immediate family, according to Jim Richard, chief of the Planning Division's Local Planning Services Bureau.

"The changes are in response to an attorney general's opinion issued in September 1977," said Richard. "He advised that while our department's rule regarding the occasional sale would probably pass a court challenge, the family conveyance rule would likely be held to be too restrictive and be overturned."

That family conveyance rule stated that a landowner could only convey one parcel of land to each member of the immediate family (spouse or child by blood or adoption) under this exemption.

The revised family conveyance rule has three major provisions. First, the certificate of survey for the exempted parcel must now carry the name of the person receiving the parcel, and recipient's relationship

to the landowner. Second, each member of the landowner's immediate family is eligible to receive one parcel under this exemption, providing that each division does not create more than one remaining parcel with fewer than 20 acres. Finally, to convey a subsequent parcel to the same family member, the local governing body must determine that the conveyance is not being made to evade review under the subdivision law. *(Continued on Page 2)*

## MPN Begins!

Over a year ago, budget and time constraints forced us to discontinue our division's planning newsletter. Since that time we have had many requests from around Montana to resume publication.

This issue of Montana Planning News marks the beginning of a new and expanded effort on our part to provide for the timely exchange of information on planning and community development. On a monthly basis, we intend to highlight recent events at the local, state and national levels that are of interest to local officials and others involved in planning and community development.

We welcome your comments and suggestions concerning our newsletter and extend to you a continuing invitation to submit brief essays, articles and reports of local activities to the Montana Planning News.

Harold M. Price  
Administrator  
DCA Planning Division

# Rules (continued)

The revised occasional sale rule keeps the provision that prohibits, for a 12-month period, the taking of an occasional sale from a parcel that was created as an occasional sale, or the taking of a second occasional sale from the remaining tract or contiguous tracts held in single ownership.

Governing bodies must adopt their local criteria by March 1, 1978. To assist local planners and officials in preparing these the Planning Division has drafted model requirements and criteria which are available from the Division.

In an initial attempt at revision, the bureau had proposed repealing all restrictions on occasional sales and family conveyances, citing a Montana Supreme Court decision that had struck down one DCA rule. But public opposition to the proposal to repeal was immediate and nearly unanimous.

After further discussion, the Bureau drew up the revised rules, which became effective on November 25, 1977.

"We've got the full text of the revised rules available from our office," said Richard. "It includes standards for monuments, certificates of survey and final subdivision plats, along with other rule revisions." Copies may be obtained by calling (406) 449-3757 or by writing Jim Richard, DCA Planning Division, Capitol Station, Helena, MT 59601.

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The Montana Planning News is published each month by the Planning Division of the Montana Department of Community Affairs. There is no subscription charge. To get on our mailing list, write to the Montana Planning News, DCA Planning Division, Capitol Station, Helena, MT 59601 or call (406) 449-3757.

We welcome responses to articles, reader letters and article suggestions.

This publication is financed in part by a grant from the U.S. Department of Housing and Urban Development under the provisions of Section 701 of the Housing Act of 1954, as amended.

## Job

The DCA Planning Division has a position open for a State Land Use Planner (Grade 13), who will provide assistance to local agencies on various aspects of land use planning and regulation; review and evaluate planning studies; assist in special research projects; perform public information activities, and encourage the development of local planning programs.

Desired qualifications include a Bachelor's degree in Planning or related field plus two years of experience, or an equivalent combination of education and experience.

Starting salary is \$13,488.

To apply, contact (by Feb. 9)  
Jim Richard,  
DCA Planning Division  
1424 Ninth Avenue  
Capitol Station  
Helena MT 59601  
(406) 449-3757

DCA is an Equal Opportunity  
Employer.

## Announcement

**MONTANA  
PLANNING  
NEWS**  
February 1978

WHAT WE REALLY NEED  
IS A MAJOR SURVEY TO  
FIND OUT WHAT  
PEOPLE WANT  
FROM  
PLANNERS

YEAH, BUT IF THEY  
DON'T WANT ANYTHING  
WE'D BE IN  
A HELL OF  
A FIX



HEDMAN  
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## PLANNING BRIEFS

**GREAT FALLS . . .** After almost two years as Cascade County Planning Director, William Monroe resigned to become director of a county planning department in Oregon. His resignation took effect December 9.

Replacing Monroe as director is James Yeagley, who has been on the planning staff since 1976.

**HELENA . . .** Three Montanans will represent the state at President Carter's "National Conference on Balanced Growth and Economic Development" in Washington, D.C. from January 29 to February 2. The three, selected by Governor Judge, are Ross Cannon, Vincent Bosh and Gordon McOmber. Participants in the conference will discuss topics including local economic development strategies and impacts on land development from government actions.

**HELENA . . .** The Interim Legislative Subcommittee on Water Rights soon will hold several meetings to hear public comment on Montana's system of adjudicating water rights.

The meetings will be in Livingston, January 30; Miles City and Hamilton, February 3; Dillon, February 4; Malta, February 6, and Kalispell, February 24.

For locations and information about the meetings, write Robert Person, Legislative Council Research Division, Capitol Station, Helena, MT 59601 or call (406) 449-3064.

**MONTANA  
PLANNING  
3 NEWS**



Reprinted from the  
December 4, 1977  
Great Falls Tribune

## SUBDIVISION EXEMPTIONS: local units have a say

Subdivision law has had a grim history in Montana. The law applies only to acreage divided into parcels smaller than 20 acres. And even for those parcels, there are exemptions to subdivision review.

It is these exemptions that have been the subject of wide-ranging controversy. A 1976 study showed that 70 percent of all parcels smaller than 20 acres escaped subdivision review because of the exemptions.

Why have a subdivision law if such a large amount of subdivision activity escapes review? That's a question the Department of Community Affairs planning division has been asking for almost a year now.

After the refusal of the 1977 legislature to strengthen the law and an adverse Supreme Court decision, the DCA went so far as to propose repealing rules that limited use of two exemptions: family conveyance (which allows a landowner to transfer parcels of land to members of the immediate family) and occasional sale (which allows a landowner to sell one parcel of his land a year). Repeal would have meant no restrictions on family transfer of land and references to occasional sale that could be interpreted in several ways.

Fortunately, instead of repeal, the state now has a set of new administrative rules that give some guidance in use of exemptions and evasion of the law.

The new rules stem from an attorney general's opinion that indicated DCA's occasional sale limit was reasonable, but its family conveyance provision probably would fall if challenged in court.

So what DCA has done is keep its limits on occasional sale and adopt new rules that require local government units to establish their own criteria for determining when use of the exemptions constitutes evasion of the subdivision law. The units (city and county commissions) also will be expected to follow a new rule for family conveyance that will not allow a landowner to take a parcel out of the middle of his property if that would create two parcels smaller than 20 acres.

The local review provisions are significant. They constitute one answer to a common criticism many Montanans have voiced: that state government should not be telling local governments what to do.

Now, the local units have explicit authority to monitor subdivision exemptions and thus control abuse of the law. That's a fantastic opportunity.

But the effectiveness of the rules depends on the initiative of the local government units. We hope they prove up to handling the responsibility that DCA has spelled out for them.

# Briefs (continued)

MISSOULA . . . Missoula Planning Board Director John Crowley will leave that position February 3 to become a vice-president of Land Sales, Inc., a local development company. Crowley has served as planning director since 1973.

Dan Obermeyer, a planning board staff member for the past three years, has been appointed by the Missoula County Planning Policy Board to serve as acting director while the Board searches for a permanent replacement for Crowley.

HELENA . . . The Interim Legislative Subcommittee on Subdivision Laws will hold its next meeting on February 16, 1978, at 9:00 in Room 432 of the Capitol, Helena.

No testimony will be taken, but the public is invited to attend. The committee will discuss hearing testimony, a survey of other states' subdivision legislation, and whether new legislation is needed.

## Aesthetic Ruling from High Court

A recent Montana Supreme Court ruling that the enhancement or preservation of aesthetic values is "a sufficient basis for the state's exercise of its police power" suggests that cities and counties may use their zoning authority to regulate land uses for purely aesthetic purposes.

In *State v. Bernhard*, decided August 17, 1977, the Court upheld the validity of a Department of Health and Environmental Sciences requirement that before a motor vehicle wrecking facility can be licensed it must be screened from public view. The defendant, Cecil Bernhard of Eureka, had appealed his conviction of operating a wrecking yard without a license on the grounds that the regulation of his land for aesthetic reasons constituted an unconstitutional taking of property without compensation.

In rejecting this argument the Court noted that aesthetically-motivated regulation of land use is consistent with the Montana Constitution's declaration that all citizens have an inalienable right to "a clean and healthful environment."

The Planning Division believes that the principle enunciated by the Court in the Bernhard case is applicable to the planning and zoning efforts of local governing bodies.

WASHINGTON, D.C. . . . The National Association of Counties (NACo) has come out in opposition to proposed Federal community aid policies, which it claims ". . . may effectively polarize cities versus counties."

NACo believes recent drafts of the policies focus too much attention on urban communities, and says that the policies seem to presume that "distressed people" are only found in urban areas, leading to fears that an inordinate share of Federal funds will be targeted on that basis. NACo reminds: "County governments have a role to play in the solution to these problems, and their role must be reflected in Federal policy."

In another statement, NACo has supported farmland preservation legislation it terms "county conservation programs."

## Mapping Montana

The DCA Planning Division will release land use inventory maps in February for four Montana counties. The four (Cascade, Hill, Lewis and Clark, and Teton) are the first segment of a DCA-coordinated mapping projects involving 9 federal and state agencies that will complete land use maps for all 56 Montana counties by early 1979.

DCA plans to distribute maps to local governments, planning agencies, Soil Conservation Service offices and libraries in Montana. A limited number will be available for general distribution. For more information, write John Andrews, DCA Planning Division, Capitol Station, Helena, MT 59601 or call (406) 449-3757.

. . . . .

The U.S. Geological Survey has used satellite data to prepare land use maps of parts of 12 west-central Montana counties. To find out if an area you're interested in is covered by a map, write U.S.G.S., NCIC-R, Rocky Mountain Mapping Center, P. O. Box 25046, Room H-2206, Bldg. 25, Federal Center, Denver, Colorado 80225 or call (303) 234-2326.

# "PUBLICATIONS"

Cost Effective Site Planning/Single Family Development, *National Association of Home Builders*, 1976. 143pp. \$12.50 plus \$1.00 for handling. Available from the *Urban Land Institute*, 1200 Eighteenth St. N.W., Washington, D.C. 20036.

A practical cost manual for a variety of site designs and plans. Includes sections on site development, energy conservation and community development.

Caring for the Land: Environmental Principles for Site Design and Review, *Bruce Hendler*, ASPO, 1977. 94pp. \$8.00. Available from the *Planners Bookstore*, *American Society of Planning Officials*, 1313 E. 60th St., Chicago, IL 60637.

A good reference on important factors in site selection and evaluation. Covers ecologically sensitive areas, topography, soil types, site design principles and other topics.

STOP ME  
Before I  
PLAN AGAIN

by R. HEDMAN



Stop Me Before I Plan Again, *R. Hedman*, ASPO, 1977. 112pp. ASPO members \$5.95; others \$7.95. Available from the *Planners Bookstore*, *American Society of Planning Officials*, 1313 E. 60th St., Chicago, IL 60637.

The best collection of planning cartoons we've seen—the source of the cartoons in this issue of MPN. Mr. Hedman kindly gave us permission to reprint some of his cartoons, but there are others you won't want to miss.

"The Growth Shapers," *Council of Environmental Quality*, 1977. 71pp. No price known. Available from the *U.S. Government Printing Office*, N. Capitol Street between G and H Streets, Washington, D.C. 20401.

The report covers the relationship between land use changes and public facility changes, and suggests ways for maximizing the benefits for new developments.

PUBLICATIONS FROM THE DCA PLANNING DIVISION, Capitol Station, Helena, MT 59601

"Land Use Planning and Management in Montana," July 1977, 96 pp. \$1.00

A summary of 95 Montana statutes that authorize state agencies and local governments to regulate or guide the use of land or water.

"Differential Taxation and Agricultural Land Use," October 1975 (revised January 1978), 35pp. 50¢

An explanation and evaluation of Montana's "Greenbelt" law.

"Montana's Local Planning Legislation, July 1977, 59pp. \$1.00

The Text of five Montana planning laws: the *Municipality Zoning Enabling Act*; the *City and County Planning Enabling Act*; the *Montana Subdivision and Platting Act*; the *County Zoning by Petition Act*, and the *County Zoning Enabling Act*.

"Revised Uniform Standards for Monumentation, Certifications of Survey and Final Subdivision Plats," November 1977. Free.

The Planning Division also has available copies of changes to the Montana Model Subdivision Regulations. The changes reflect both the 1977 amendments to the subdivision law and the requirements specified in the Minimum Requirements for Local Subdivision Regulations.

The complete Montana Model Subdivision Regulations incorporating the required changes and other suggested changes will be printed in February.





## MLGI Provides Technical Info to Local Governments

If you're in local government, where can you go to get technical information on topics such as energy conservation, grant programs or law enforcement? Since last August, the answer has been the Montana Local Government Institute (MLGI).

According to Executive Director David Wanzenried, MLGI was started as a private, nonprofit corporation by the Montana Association of Counties and the Montana League of Cities and Towns "... to free up the parent organizations to do their advocacy work on behalf of local governments, and at the same time, to do an excellent job of providing technical assistance to those local governments."

The institute will originally provide technical assistance in six areas: public information and participation; grantsmanship; labor relations; liability insurance; energy conservation, and law enforcement and corrections. Following these, MLGI plans to develop resources in other fields, including fiscal management, public health and transportation. It also will have the capability to bring in outside consultants in fields not covered by staff experience.

Prior to MLGI's formation, technical assistance programs had been handled in a piece-meal fashion by both parent organizations. The institute was conceived in an attempt to consolidate and improve these services for local governments.

"We would like to go beyond just providing technical information," said Wanzenried. "We will research what is working well and what isn't in local government management, we'll serve as a liaison between local and state government, and we'll focus public attention on worthwhile local innovations—for example, the 17 new home rule governments in Montana. (Continued on Page 8)

# MLGI (continued)

DCA is providing MLGI with in-kind services to match a federal grant that helped start the corporation. Wanzenried is presently applying for new grants, but he hopes MLGI's contract work with local governments will make the institute self-supporting soon.

The two five-member boards of the parent organizations together form the MLGI board, which is responsible for setting policy. Executive Director Wanzenried, former deputy director of the State Commission on Local Government, is presently the only full-time MLGI employee.

You can contact MLGI at P. O. Box 487, Helena, MT 59601 or at (406) 449-3677 or 449-3494.

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